APPENDIX

Pertinent provisions of the Emergency Price Control Act of 1942, as amended, (56 Stat. 23, 765; 58 Stat. 632; 59 Stat. 306; 50 U. S. C. App. Supp. IV, 901 et seq.).

Section 2 (a):

> Whenever in the judgment of the Price Administrator (provided for in section 201) the price or prices of a commodity or commodities have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act, he may by regulation or order establish such maximum price or maximum prices as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum price, the Administrator shall ascertain and give due consideration to the prices prevailing between October 1 and October 15, 1941 (or if, in the case of any commodity, there are no prevailing prices between such dates, or the prevailing prices between such dates are not generally representative because of abnormal or seasonal market conditions or other cause, then to the prices prevailing during the nearest two-week period in which, in the judgment of the Administrator, the prices for such commodity are generally representative), for the commodity or commodities included under such regulation or order, and shall make adjustments for such relevant factors as he may determine and deem to be of general ap-

plicability, including the following: Speculative fluctuations, general increases or decreases in costs of production, distribution, and transportation, and general increases or decreases in profits earned by sellers of the commodity or commodities, during and subsequent to the year ended October 1, 1941: *Provided,* That no such regulation or order shall contain any provision requiring the determination of costs otherwise than in accordance with established accounting methods. Every regulation or order issued under the foregoing provisions of this subsection shall be accompanied by a statement of the considerations involved in the issuance of such regulation or order. As used in the foregoing provisions of this subsection, the term "regulation or order" means a regulation or order of general applicability and effect. Before issuing any regulation or order under the foregoing provisions of this subsection, the Administrator shall, so far as practicable, advise and consult with representative members of the industry which will be affected by such regulation or order, and shall give consideration to their recommendations. In the case of any commodity for which a maximum price has been established, the Administrator shall, at the request of any substantial portion of the industry subject to such maximum price, regulation, or order of the Administrator, appoint an industry advisory committee, or committees, either national or regional or both, consisting of such number of representatives of the industry as may be necessary in order to constitute a committee truly representative of the industry, or of the industry in such region, as the case may be. The committee

shall select a chairman from among its members, and shall meet at the call of the chairman. The Administrator shall from time to time, at the request of the committee, advise and consult with the committee with respect to the regulation or order, and with respect to the form thereof, and classifications, differentiations, and adjustments therein. The committee may make such recommendations to the Administrator as it deems advisable, and such recommendations shall be considered by the Administrator. Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, without regard to the foregoing provisions of this subsection, issue temporary regulations or orders establishing as a maximum price or maximum prices the price or prices prevailing with respect to any commodity or commodities within five days prior to the date of issuance of such temporary regulations or orders; but any such temporary regulation or order shall be effective for not more than sixty days, and may be replaced by a regulation or order issued under the foregoing provisions of this subsection.

Section 2 (c):

Any regulation or order under this section may be established in such form and manner, may contain such classifications and differentiations, and may provide for such adjustments and reasonable exceptions, as in the judgment of the Administrator are necessary or proper in order to effectuate the purposes of this Act. * * *

Section 4 (a):

It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

Section 202 (a):

The Administrator is authorized to make such studies and investigations, *to conduct such hearings,* and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order under this Act, or in the administration and enforcement of this Act and regulations, orders, and price schedules thereunder.

Section 202 (b):

The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may

require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-area housing accommodations. The Administrator may administer oaths and affirmations and may, whenever necessary, by subpena require any such person to appear and testify or to appear and produce documents, or both, at any designated place.

Section 202 (c):

For the purpose of obtaining any information under subsection (a), the Administrator may by subpena require any other person to appear and testify or to appear and produce documents, or both, at any designated place.

Section 202 (g):

No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (U. S. C., 1934 edition, title 49, sec. 46), shall apply with respect to any individual who specifically claims such privilege.

Section 204 (d):

Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as

provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

Section 205 (a):

Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage

in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

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Pertinent provisons of "Maximum Price Regulation 165, as amended—Services" (7 F. R. 6428, 8239, 8798, 8948, 9343):

Section 1499.101:

Prohibition against dealing in services above maximum prices. On and after July 1, 1942, regardless of any contract or other obligation:

(*a*) Sales. No "person" shall "sell" or supply any of the "services" set forth in paragraph (c) of this section at a price higher than the maximum price permitted by this Maximum Price Regulation No. 165 as amended.

* * * * *

(*c*) Services Covered. This Maximum Price Regulation No. 165 as amended shall apply to all rates and charges for the following services, except when such services are rendered as an employee:

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(4) Automotive vehicles (including but not limited to automobiles, buses, motorcycles, semi-trailers, tractors, trailers, and trucks—lubrication, maintenance, painting, rental, repair, storage (including but not limited to dead storage and parking), towing, washing or other servicing of (including but not limited to maintenance, rental or repair of accessories or parts such as batteries, radios, tires, or tubes, and including but not limited to pick-up and delivery and mounting and demounting of tires and

use of loaned tires and tubes but not including retreading or recapping of tires or any service rendered in connection with a sale of tires or tubes or with the retreading or recapping of tires): Provided, That in the case of any of the foregoing services for which a charge is authorized by any rationing order or rationing regulations issued by the Office of Price Administration, the maximum price hereunder shall be the highest price authorized by such rationing order or regulations.

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Section 1499.102:

Maximum Prices for Services: General Provisions. Except as otherwise provided in Maximum Price Regulation No. 165, as amended, the seller's maximum price for any service to which this Maximum Price Regulation No. 165, as amended, is applicable shall be:

(*a*) The highest price charged during March, 1942 (as defined in this section) by the seller—

(1) For the same service; or

(2) If no charge was made for the same service, for the similar service most nearly like it;

Provided, however, That if the seller in computing his prices during March, 1942, regularly used a rate or a "pricing method" including specific charges for particular items in the service rendered, the price resulting from proper application (i) of the highest such rate in effect during March, 1942, or (ii) of such pricing method, using the highest charges in effect during March, 1942, shall be deemed to be the highest price charged by the seller during that month for any service to which the rate or pricing method was then ap-

plicable or by usual trade practice would have been applicable had the service been offered in March, 1942, and shall be the seller's maximum price for any such service; *Provided, further* That a person engaged in commission selling, auctioneering, or the brokerage of commodities may continue to determine his maximum price by the use of the highest percentage rate he used during March, 1942, in connection with the sale of the particular commodity, or, when the same or a similar commodity was not sold or purchased by him in March, 1942, he may use such highest percentage rate used in the same calendar month of 1941 as the month in which he is presently supplying the service; or

(*b*) If the seller's maximum price cannot be determined under paragraph (a), the maximum price of the "most closely competitive seller of the same class"—

(1) For the same service; or

(2) If such competitive seller has no maximum price for the same service, for the similar service most nearly like it; or

(*c*) If the seller's maximum price cannot be determined under paragraphs (a) or (b) of this section, a price determined by applying the rate, or the pricing method and charges, regularly used by the seller, for any other service or type of service, which he supplied during March, 1942, which price, however, shall not exceed a combination of the following items—

(1) An item for cost of direct labor used in supplying the service for which a price is sought, computed on a basis no higher than the highest wage rate which the seller had in effect for each type of employee during March, 1942, or if he had

no wage rate in effect during such month, the highest wage rate which his competitors in the same area had in effect for each type of employee during March, 1942, plus

(2) An item for cost of materials used in supplying the service for which a price is being determined, computed on a basis no higher than the maximum prices, for purchase by the seller, established for such material by the Office of Price Administration, or if no maximum price has been established then the highest price which the seller, or a purchaser of the same class, had to pay for such material in the month of March, 1942, plus

(3) The margin over such cost for direct labor and materials (i. e., subparagraph (1) plus subparagraph (2) equals, as a percentage of cost, to the average margin over direct labor and material cost which was figured on the service or type of service for which a price was charged by the seller during March, 1942, and which accounted for a greater portion of the seller's gross income from services than any other service during March, 1942, less

(4) All discounts and other allowances granted during March, 1942, to a purchaser of the same class.

Within ten days after determining the price under this paragraph the seller shall report such price to the "appropriate field office of the Office of Price Administration" upon Form No. 265:1. Such form shall be duly filled out in duplicate and may be copied from the form contained in Appendix A (1499.122) of this Maximum Price Regulation No. 165, as amended, or secured from the appropriate field office of the Office of Price Administration. The price so

reported shall be subject to adjustment at any time by the Office of Price Administration.

(d) If the seller did not supply any service during March 1942, and if the service to be priced is not the same as or similar to any service supplied during that month by a competitive seller of the same class, and if such service cannot be priced under Sec. 1499.103 of this Maximum Price Regulation No. 165, as amended, a price approved by the Office of Price Administration. Application for such approval shall be made on Form 265:3 contained in Appendix C (§ 1499.124) of this Maximum Price Regulation No. 165, as amended, and shall be filed in duplicate with the appropriate field office of the Office of Price Administration. The application shall contain (1) 'an appropriate description and identification' of the service for which a price is being reported; (2) a statement of the reasons why it cannot be priced except under this paragraph (d); and (3) a statement of the proposed maximum price, setting forth separately the amount included for labor, the amount for materials, and the amount for overhead and profit. Unless the Office of Price Administration or an authorized representative thereof shall, by order mailed to the applicant within 10 days from the date of filing the application, disapprove the maximum price as reported, such price shall be deemed to have been approved, subject to disapproval or adjustment at any time by the Office of Price Administration.

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Pertinent provisions of "Revised Maximum Price Regulation No. 165 (Services)" (9 F. R. 7439, 11,173)

Section 1. Services covered. This regulation covers all services previously covered by Maximum Price Regulation No. 165 as amended, Services. It also covers * * *:

Section 4. General pricing provisions. In determining your maximum price, use the first of the following provisions which applies to you. Your maximum price shall be:

(a) The highest price at which you supplied the same service in March, 1942, to a purchaser of the same class. If, however, in March, 1942, you used a rate or a pricing method to determine your price, you may continue to use your highest March, 1942, rate or pricing method (using your highest March, 1942, charges) to determine your maximum price for the same service, to a purchaser of the same class.

(b) The highest price at which you offered to supply the same service for supply in March, 1942, to a purchaser of the same class, if you did not actually supply it in that month, or a price resulting from application of your highest March, 1942, rate or pricing method (using your highest March, 1942, charges to a purchaser of the same class) which would, by your usual trade practice, have been used by you had you supplied the service in that month.

(c) The maximum price of your closest competitor for the same service to a purchaser of the same class, if you did not actually supply it or offer it for supply in March 1942 to any purchaser. However, you may not take your closest competitor's maximum price if such price is based on his offering price.

Section 5. Services which cannot be priced under section 4. (a) If you cannot determine a maximum price under section 4, you must file an application with the appropriate OPA district office for approval of a maximum price in line with the level of maximum prices otherwise established by this regulation. The application shall contain a description of the service, anticipated direct labor and material costs, and the proposed maximum price. It shall also contain a full explanation of the reasons why you cannot price this service under section 4. If you supplied any other service in March, 1942, submit, in addition, a description of the most comparable service showing your present direct labor and material costs for it and your present maximum price. You must also furnish any additional information which OPA may require.

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